Supreme Court, U.S.
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No. (1)

In The

Supreme Court of the United States

MICHAEL J. DEE

Petitioner

v.

STATE OF WYOMING

Respondent

On Petition For A Writ Of Certiorari
To The Wyoming Supreme Court

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review

Did the enforcement of the Wyoming marijuana laws "affect" petitioner's fundamental rights to liberty and property secured from unreasonable seizure by the Fourth and Fifth Amendments of the United States Constitution?

Does the Fourth and Fifth Amendments permit the Wyoming Supreme Court the authority to review the constitutionality of laws that criminalize the private growing and possession of marijuana by rational review?

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OPINIONS BELOW

The Wyoming Supreme Court opinion, that the petitioner ask this Court to review, is *Dee v State of Wyoming* S-07-0185, 2008 WY 17.

The Laramie County District Court opinion is *Dee v. State of Wyoming,* Doc. No. CV- 169-897 and Doc. No. CV. - 169 - 223. These opinions are reproduced, along with the petitioner's complaint in the district court, in the Appendix.

JURISDICTIONAL BASIS

This petition asks the Court to review the February 13, 2008 opinion and judgment of the Wyoming Supreme Court. The Wyoming Supreme Court affirmed the decision of the district court, which dismissed the petitioner's second lawsuit under W.S. 1-37-103, because Dee still did not present a justiciable controversy.

On May 6th, 2008, this Court's Clerk granted the Petitioner 60 days to file a corrected petition.

The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgments or orders in question is 28 U.S.C. 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS CASE

Constitution of the United States.

Amendment IV. "The right of the people to be secure in their Persons, houses, papers, and effects,

against unreasonable searches and seizures, shall not be violated." (App. 12)

Amendment V. "No person shall be deprived of life, liberty, or property, without due process of law." (App. 12)

Wyoming Statutes

W.S. 1-37-103. Right of interested party to have determination made. Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by the Wyoming constitution or by a statute, municipal ordinance, contract or franchise, may have any question of construction or validity arising under the instrument determined and obtain a declaration of rights, status or other legal relations.

W.S. 35-7-1031. (c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this act. Any person who violates this subsection:

(i) And has in his possession a controlled substance in the amount set forth in this paragraph is guilty of a misdemeanor punishable by imprisonment for not more than twelve (12) months, a fine of not more than one thousand dollars ($1,000.00), or both. Any

person convicted for a third or subsequent offense under this paragraph, including convictions for violations of similar laws in other jurisdictions, shall be imprisoned for a term not more than five (5) years, fined not more than five thousand dollars ($5,000.00), or both. For purposes of this paragraph, the amounts of a controlled substance are as follows: (A) For a controlled substance in plant form, no more than three (3) ounces;

W.S. 35-7-1040. Planting, cultivating or processing marihuana, peyote or opium poppy. Any person who knowingly or intentionally plants, cultivates, harvests, dries, or processes any marihuana, peyote, or opium poppy except as otherwise provided by law shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed six (6) months in the county jail or by a fine not to exceed one thousand dollars ($1,000.00), or both.

STATEMENT OF THE CASE

This Petition asks the Court to review the Wyoming Supreme Court's decisions affirming the Districts court's dismissal of petitioner's Declaratory Judgment complaint.

The State of Wyoming Declaratory Judgment statute, W.S. 1-37-103, allows any person whose rights are affected by a statute, presenting a justiciable controversy, may have determine any question of construction or validity arising under the

statute, and obtain a declaration of rights.

Petitioner has a criminal record in Wyoming for violating W.S. 35-7-1031 (c) and W.S. 35-7-1040. (App. 2, ¶ 2; App. 8 ¶ 4).

The Wyoming Declaratory Judgment complaint was filed in Laramie County District Court, State of Wyoming on May 15, 2007. (App. 7-11).

Petitioner had claimed "these criminal laws W.S. 35-7-1040 and W.S. 35-7-1031/C are unjustified therefore unreasonable and contravened the plaintiff's right to be secure in his person, his home, his papers and in his effects from unreasonable searches and seizures guaranteed by Amendment IV of the Constitution of the United States." (Cmplt. ¶ 9, App. 9). Petitioner had claimed that "these criminal laws, W.S. 35-7-1040 and W.S. 35-7-1031/C, are unjustified, unreasonable and unnecessary therefore have deprived the plaintiff his liberty and his property without 'due process of law' secured by Amendment V of the Bill of Rights." (Cmplt. ¶ 12, App. 10).

The Wyoming court of first instance dismissed Dee's first complaint declaring petitioner did not present a "justiciable controversy." (App. 5-6). The petitioner refiled his complaint, (App. 7-11), to meet what he thought was lacking, the requirement for justiciable relief. The difference in the two complaints is the request for personal relief to overturn his convictions, after the court declared the marijuana laws were an unreasonable regulation of his individual rights to liberty and property. This difference is mentioned in the Wyoming Supreme Court, (App. 3 ¶3). This second complaint was

was barred by the doctrine of *res judicata*. Dee still had not presented a justiciable controversy implying Dee is claiming marijuana is a fundamental right.

In his briefs to the Wyoming Supreme Court, the federal question, rights secured by the Fourth and Fifth Amendments, was raised in petitioner's Statement of Issues.

The Wyoming Supreme Court writes "Dee alleged the laws violated his fundamental right to possess, use and grow marijuana and contravened the tenets of the Fourth and Fifth Amendments of the United States Constitution." "The District court found the challenged statutes constitutional and found no justiciable controversy." (App. 2 ¶2).

The Court below has interpreted Petitioner's declaratory judgment action to mean only one thing. Petitioner is "alleging" marijuana is a constitutional right on the same level as the Fourth and Fifth Amendments of the Constitution of the United States.

The Court below has denied the petitioner's rights to liberty and property have been affected prejudicially by the enforcement of the marijuana laws because marijuana is not a fundamental right.

The Wyoming Supreme Court is claiming that the marijuana laws are rational regulation of the petitioner's civil rights to liberty and to property secured by the Fourth and Fifth Amendments.

REASONS FOR GRANTING THE WRIT
Rule 10(c)

The Wyoming Supreme Court has decided an important question of federal law that has not been, but should be, settled by this Court.

Does the Fourth and Fifth Amendment of the United States Constitution permit the Wyoming Supreme Court the authority to review the constitutionality of laws that criminalize the private growing and possession of marijuana by rational review?

The Wyoming Supreme Court has decided an important federal question in a way that conflicts with relevant decisions of this Court. Regulation of individual fundamental rights to liberty and to property, by criminal laws, must be reasonable not rational.

THE DECISION BELOW CONFLICTS WITH RELEVANT DECISIONS Of THIS COURT

This Court has said in *Zwickler* v. *Koota* "state courts also have the solemn responsibility, equally with the federal courts, 'to guard, enforce, and protect every right granted or secured by the Constitution of the United States.'" *Zwickler v. Koota*, 389 U.S. 241, 248 (1967) citing *Robb v. Connolly* 111 U.S. 624, 637 (1884).

This Court said, the "Fourth Amendment, and the personal rights which it secures, have a long history. At the very core stands the right of a man to retreat into his own home and there be free from

unreasonable governmental intrusion." *Silverman v United States,* 365 U.S. 505, 511 (1961).

The Wyoming Supreme Court, in this case, failed in its "solemn responsibility to guard, enforce, and protect" petitioner's person, house, papers, and effects, ie liberty and property, from unreasonable searches and seizure secured by the Fourth Amendment of the United States Constitution.

In 1878, this Court said: "Rights to life, liberty, and the pursuit of happiness are equivalent to the rights of life, liberty, and property. These are the fundamental rights which can only be taken away by due process of law." *Slaughter-House Cases,* 83 U.S.(16 Wall) 36, 116 (1873).

The Court below did not evaluate the search or seizure of petitioner's person and property for violating the marijuana laws under traditional standards of reasonableness as required by due process of law.

The Court below is saying it is rational to search and seize petitioner's person, house, papers, and effects for violating the marijuana laws because marijuana is not a fundamental right.

A. THE PETITIONER HAD AND HAS A CONSTITUTIONALLY PROTECTED INTEREST IN LIBERTY

This Court has declared "liberty is the freedom from unreasonable searches and seizures". *Planned Parenthood of Southeastern Pa.* v. *Casey,* 505 U.S. 833, 848 (1992). Liberty is freedom from physical restraint.

In Wyoming, the petitioner was on the receiving end of a search warrant for growing marijuana. Petitioner was arrested from the results of that search warrant. The petitioner's person was seized by law enforcement officials.

This court stated in *Terry v. Ohio,* "Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry v. Ohio,* 392 U.S. 1, 19 n. 16 (1968).

This court has declared in *Graham v. Connor* the "seizure of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard." The "Fourth Amendment provides an explicit textual source of constitutional protection against "physically intrusive governmental conduct" and "must be the guide for analyzing these claims." *Graham v. Connor,* 490 U.S. 386, 395 (1989).

B. THE PETITIONER HAD AND HAS A CONSTITUTIONALLY PROTECTED INTEREST IN PROPERTY

Marijuana is property. Petitioner's property has been seized by the State of Wyoming.

The Congress of the United States has declared that individuals enjoy a fundamental right to own and enjoy property which they claim is enshrined in the United States Constitution. *Cuban Liberty and Democratic Solidarty (LIBERTAD) Act* of 1996 Title 22 U.S.C.-6081.

This court has declared "property rights" are

"guaranteed by the Constitution." *Liggett Co. v. Baldridge*, 278 U.S. 105, 111 (1928).

This court has long recognized "that rights in property are basic civil rights." *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552 (1972).

This Court held "that seizures of property are subject to Fourth Amendment scrutiny." *Soldal v. Cook County*, 506 U.S. 56, 68 (1992). "A 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).

This Court said "It is the governmental power of self-protection and permits reasonable regulation of rights and property in particulars essential to the preservation of the community from injury." *Panhandle Eastern Pipeline Co. v. Highway Comm'n*, 294 U.S. 613, 622 (1935).

C. THE PETITIONER HAD AND HAS A CONSTITUTIONALLY PROTECTED INTEREST IN DUE PROCESS OF LAW

Under due process of law the petitioner has the right to know why it is reasonable to criminalize the private growing of marijuana.

Making an activity a "crime" this Court said is an "intrusive regulation and the usual judicial deference to the legislature is inappropriate." *Moore v. East Cleveland*, 431 U.S. 494, 499 (1977). This Court requires "criminal statutes be subjected to the most rigid scrutiny," *Loving v. Virginia*, 388 U.S. 1, 11 (1967).

This Court has stated that the "prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of governmental interference." *Fuentes v. Shevin,* 407 U.S. 67, 81 (1972).

This court said the "guaranty of due process ... demands only that the law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a real and substantial relation to the object sought to be attained." *Nebbia v. New York,* 291 U.S. 502, 525 (1934).

In *Cary v Piphus*, this Court said the due process clause "raises no impenetrable barrier to the taking of a person's possessions, or liberty, or life. Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or *unjustified deprivation of life, liberty*, or property." *Cary v Piphus*, 435 U.S. 247, 259 (1978).

And, "*unless justified* as a valid exercise of the police power, the act assailed must be declared unconstitutional because the enforcement thereof has deprived [Petitioner of his liberty and] property without due process of law." *Liggett Co. v. Baldridge,* 278 U.S. 105, 111; (1928).

This court said the "validity of regulatory measures may be challenged on the ground that they transgress the Constitution, and thereupon it becomes the duty of the court, in the light of the facts in the case, to determine whether the regulation is reasonable and valid or essentially unreasonable, arbitrary and void." *Norfolk & W.R. Co. v Public*

Service Commission of West Virginia 265 U.S. 70, 74 (1924).

State "police power which trenches upon the constitutionally protected freedom ... bears a heavy burden of justification ... and will be upheld only if it is necessary, and not merely rationally related, to the accomplishment of a permissible state policy." *McLaughlin v. Florida,* 379 U.S. 184, 196 (1964); *Griswold v. Connecticut,* 381 U.S. 479, 497, (1965);

CONCLUSION

The petitioner's fundamental rights to liberty and property, secured by the Fourth and Fifth Amendments of the United States Constitution, were "affected" by the enforcement of the marijuana laws.

The Fourth and Fifth Amendments of the United States Constitution does not permit the Wyoming Supreme Court the authority to review the constitutionality of laws that criminalize the private growing and possession of marijuana by rational review.

This Court should grant the writ and reverse the judgments below.

Respectfully submitted,

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IN THE SUPREME COURT, STATE OF WYOMING

2008 WY 17

OCTOBER TERM, A.D. 2007
February 13,2008

MICHAEL J. DEE
Appellant (Plaintiff)

V S-07-0185

THE STATE OF WYOMING
Appellee (Defendant)

Appeal from the District Court
of Laramie County

The Honorable Edward L. Grant, Judge

Representing Appellant:
Michael J. Dee, *Pro se*

Representing Appellee:
Brue A. Salzburg, Wyoming Attorney General;
Terry L. Armitage, Deputy Attorney General

Before VOIGT, C.J., AND GOLDEN, HILL, KITE, BURKE, JJ.

GOLDEN, Justice
[¶1] Appellant Michael J. Dee appeals from the

district court's order dismissing his declaratory judgment action. Dee presents no argument that the district court's specific ruling was incorrect. The district court's order is therefore summarily affirmed.

[¶2] The essential facts in this case are not in dispute. Dee was convicted in 1982 of possessing and cultivating marijuana. The record does not reflect that Dee appealed his 1982 conviction. In January 2007, Dee filed a complaint for declaratory relief. In his complaint, Dee did not ask the district court to overturn his 1982 conviction. Instead, he asked the district court to declare the laws upon which he was convicted of, Wyo. Stat. Ann. 35-7-1031(c) and 35-7-1040 (Lexis Nexis 2007),[1] as well as Wyo. Stat. Ann.35-7- 1039 (Lexis Nexis 2007), unconstitutional. Dee alleged the laws violated his fundamental right to possess, use and grow marijuana and contravened the tenets of the Fourth and Fifth Amendments of the United States Constitution. After a hearing on May 2, 2007, the district court granted summary judgment in favor of the State. The District court found the challenged statutes constitutional and found no justiciable controversy.

[¶3] Instead of appealing the District court's summary judgment ruling, Dee commenced the present declaratory judgment action on May 15,

---

[1] Section 35-35 -7-1031(c) makes it unlawful for any person to knowingly and intentionally possess marijuana, 35-7-1039 makes it unlawful for a person to use marijuana , and 35-7-1040 makes it illegal for any person to grow marijuana.

2007, raising the same constitutional claims. In his complaint, Dee also asked the District Court to overturn his 1982 conviction. The State countered with a motion to dismiss pursuant to W.R.Cr.P. 12(b)(6) for failure to state a claim upon which relief could be granted. Specifically, the State asserted that Dee's claims were barred by the doctrine of res judicata because they were raised and decided against Dee in the prior declaratory judgment action. The District court agreed and dismissed Dee's complaint with prejudice. This appealed followed.

[¶4] On appeal, Dee focuses his attention exclusively on the constitutionality of the marijuana statutes, reasserting the same claims raised in the underlying declaratory judgment action. As already noted, the district court dismissed those claims on res judicata grounds, and Dee has not presented any legal argument directly challenging the district court's determination. That failure is fatal to Dee's appeal. Additionally, as previously noted, Dee did not appeal his 1982 conviction in which he could have asked that it would be overturned. In this appeal he presents no legal argument to support this untimely request now. Consequently, his conviction is res judicata as well. For these reasons we summarily affirm the district court's order dismissing Dee's complaint.

IN THE DISTRICT COURT
FIRST JUDICIAL DISTRICT
STATE OF WYOMING COUNTY OF LARIMIE

DOCKET NO. 169-897

MICHAEL J. DEE
PLAINTIFF,
VS.
STATE OF WYOMING
DEFENDANT.

ORDER DISMISSING COMPLAINT

The Court notes that the claims asserted here were adjudicated in January, 2007, docket 169-223 between the plaintiff and the defendant. The defendant filed a motion to dismiss. For reasons stated in the motion, the court *sua sponte*.

ORDRS that the complaint is dismissed with prejudice.

DATED this 25th day of June, 2007.

/s/ Edward L. Grant
Edward L. Grant
District Judge

App. 5

STATE OF WYOMING
COUNTY OF LARIMIE
IN THE DISTRICT COURT
FIRST JUDICIAL DISTRICT

MICHAEL J. DEE
PLAINTIFF,
v
STATE OF WYOMING
DEFENDANT.

Doc.0102 No. 169-223

ORDER GRANTING DEFENDANTS'S MOTION FOR SUMMARY JUDMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THE ABOVE ENTITLED MATTER came before the Court for a summary judgment hearing on the 2nd day of May, 2007, the Plaintiff, Michael J. Dee appearing Pro se and the Defendant, State of Wyoming, represented by Timothy J. Forwood.

The Wyoming Supreme Court has held, "There is a strong presumption in favor of the constitutionality of a statute ." Jones v. State, 2006 WY 40, ¶ 8, 132 P.3d 162, 164 (Wyo. 2006). The Court, having read the pleadings, heard argument and being otherwise informed, finds as follows:

1. Plaintiff has not overcome the strong presumption of constitutionality.

2. Plaintiff has not presented this court with a justiciable controversy.

IT IS THEREFORE ORDERED that plaintiff's motion for summary judgment is denied, and Defendant's motion for summary judgment is granted.

Done this 7th day of May, 2007

/s/ Edward L. Grant
Hon. Edward L. Grant
District Court Judge

App. 7

SECOND COMPLAINT

District Court of the First Judicial District

Laramie County, Wyoming

MICHAEL J. DEE	)
Plaintiff	)
	)
V.	) Civil Docket
	) No. 169-897
STATE OF WYOMING	)
Defendant	)

COMPLAINT FOR DECLARATORY RELIEF
I. PRELIMINARY STATEMENT

I, Michael J. Dee, challenges the reasonableness of the Wyoming marijuana laws of which I have been convicted of in 1982. It is still a criminal offence to grow and possess marijuana for personal private use. Doubts about standing are removed by reason of criminal convictions. Certainly even today I have standing to assert that the offenses which I was convicted of cannot constitutionally be a crime. Plaintiff has a personal stake in the outcome of this controversy. To declare my criminal conviction are overturned.

II. JURISDICTION AND VENUE

2. Jurisdiction, to review this case and

controversy, is conferred on this Court, pursuant to Article I sections 8 and 37 of the Wyoming Constitution; Wyoming statutes W.S. Title 1-37-102 and 103, Declaratory Judgment; Amendments IV and V of the Constitution of the United States.

III. PARTIES

3. There still remains a substantial case between the State of Wyoming and the plaintiff having adverse legal interests, admitting of an immediate and definitive determination of the Plaintiff's legal rights and the validity of state police power to warrant the issuance of a declaratory judgment.

IV. FACTS

4. On March 26th 1982 a search warrant was issued and served upon plaintiff's residence by Laramie County Sheriff's deputies on March 27, 1982 for growing marijuana in Cheyenne, Wyoming. I was arrested, prosecuted and convicted for growing marijuana, W.S.35-7-1040 and possession of a controlled substance, marijuana W.S.35-7-1031/C.

5. State of Wyoming can not justify these criminal laws with clear, unequivocal, and convincing evidence, beyond a reasonable doubt, that the use of marijuana is deleterious to plaintiff's health, and is a greater threat to his health than the his use of alcohol and tobacco.

6. The Wyoming Constitution says the Constitution of the United States is the supreme law

of the land.

7. The Congress of the United States says individuals enjoy a fundamental right to own and enjoy property which is enshrined in the United States Constitution, (see Title 22 U.S.C.-6081). Marijuana is property. Therefore, the right to acquire and possess this property describe as marijuana, is a fundamental.

CAUSES OF ACTION

A. VIOLATION OF FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION

8. Plaintiff re allege and incorporates by reference herein the facts of paragraphs 1 through 7 above,

9. Plaintiff claims these criminal laws W.S.35-7-1040 and W.S.35-7-1031/C are unjustified therefore unreasonable and contravened the plaintiff's right to be secure in his person, his home, his papers and in his effects from unreasonable searches and seizures guaranteed by Amendment IV of the Constitution of the United States.

10. Criminalizing the private growing and use of this property is unreasonable and is not a valid exercise of the police power and is in contravention of Amendment IV of the Constitution of the United States.

B. VIOLATION OF FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION

11. Plaintiff re allege and incorporates by

reference herein the facts of paragraphs 1 through 7 above.

12. These criminal laws W.S.35-7-1040 and W.S.35-7-1031/C are unjustified, unreasonable and unnecessary therefore has deprived the plaintiff his liberty and his property without "due process of law" secured by Amendment V of the Bill of Rights.

13. Plaintiff claims that these legislative enactments, W.S.35-7-1040 and W.S.35-7-1031/C, are not narrowly drawn to express legitimate state interests therefore violates "due process of law".

14. Criminalizing the use of marijuana is merely rationally related to a permissible Wyoming state interest, therefore violates "due process of law".

15. Not being able to tax the plaintiff for growing marijuana for private use has nothing to do with public health and safety, therefore violates "due process of law".

16. These criminal statutes W.S.35-7-1040 and W.S.35-7-1031/C can not be shown to be necessary to the accomplishment of some permissible state objective therefore violates "due process of law".

VI. RELIEF

WHEREFORE, Plaintiff respectfully request this Court to enter a judgment:

1. Declare the Wyoming Statues criminalizing the private growing, W.S.31-7-1040, private possession W.S.35-7-1031/C and private use, 35-7-1039 of marijuana, are unjustified therefore unreasonable and contravened the plaintiff's rights secured by

Amendment IV of the United States Constitution and therefore unconstitutional.

2. Declare the Wyoming Statues, that criminalize the private growing, W.S.31-7-1040, private possession W.S.35-7-1031/C and private use, 35-7-1039, of marijuana, are not narrowly drawn to express legitimate state interests and are merely rationally related to the accomplishment of a permissible state policy therefore violates "due process of law" of Amendment V of the United States Constitution and are unconstitutional.

3. Declare plaintiff criminal convictions are overturned.

4. Grant such other and further relief deemed just in the circumstances.

DATED this 8th day of May, 2007

/s/ Michael J. Dee

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III CONSTITUTIONAL PROVISIONS

Constitution of the United States

Amendment IV.

"The right of the people to be secure in their Persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Amendment V

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

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(2)

No. 07-1535

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In The
Supreme Court of the United States

MICHAEL J. DEE, pro se,

Petitioner,

v.

STATE OF WYOMING,

Respondent.

On Petition For A Writ Of Certiorari To The Wyoming Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

DID THE PETITIONER PROPERLY RAISE A SUBSTANTIAL FEDERAL QUESTION, AND DID THE WYOMING SUPREME COURT BASE ITS DECISION ON INDEPENDENT AND ADEQUATE STATE GROUNDS, THEREBY DENYING THIS COURT JURISDICTION TO CONSIDER PETITIONER'S CLAIMS?

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OPINION BELOW

The opinion of the Wyoming Supreme Court is reported at *Dee v. Wyoming*, 177 P.3d 218 (Wyo. 2008). This opinion is before this Court as Appendix 1 to the petition for certiorari.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court by way of a Petition for Writ of Certiorari, through the authority of 28 U.S.C.A. § 1257(a). However, his case fails to satisfy the jurisdictional requirements of that statute.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner seeks to invoke the provisions of the U.S. CONST. AMEND. IV and V. However, he failed to properly present any questions pertaining to these provisions in the Wyoming Supreme Court.

STATUTORY PROVISIONS INVOLVED

In addition to the constitutional provisions set forth in Petitioner's Petition, Respondent provides the following statutory provisions.

28 U.S.C.A. § 1257

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

STATEMENT OF THE CASE

In 1982, Michael J. Dee was convicted, in a Wyoming district court, of possessing and cultivating marijuana. In January of 2007, Dee filed a complaint for declaratory relief in Wyoming's First Judicial District Court, Laramie County, Wyoming, in Civil Docket No. 169-223. In that complaint, Dee asked the district court to declare WYO. STAT. ANN. §§ 35-7-1031(c), 35-7-1039, and 35-7-1040 unconstitutional, as they allegedly violated his fundamental right to possess, use and grow marijuana and contravened the tenets of the Fourth and Fifth Amendments to the

United States Constitution. On May 7, 2007, the district court granted the State of Wyoming's motion for summary judgment and denied Dee's motion for summary judgment. Furthermore, the district court found that the statutes in question were constitutional and that Dee did not present a justiciable controversy.

On May 15, 2007, Dee filed a "Second Complaint" with Wyoming's District Court for the First Judicial District in Civil Docket No. 169-897. In the "Second Complaint," Dee renewed his assertions that the aforementioned statutes were unconstitutional and, furthermore, he asserted that "[d]oubts about [his] standing are removed by reason of [his] criminal convictions." The State of Wyoming moved the district court to dismiss Dee's second case for failing to state a claim upon which relief may be granted, pursuant to WYO. R. CIV. P. 12(b)(6). In that motion, the State of Wyoming alleged that Dee's claims were barred by the doctrine of *res judicata*, as Civil Docket No. 169-223 and Civil Docket No. 169-897 satisfied the four-factor test required for application of that doctrine under Wyoming jurisprudence.[1] The district court

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[1] Those factors are: "(1) identity in parties; (2) identity in subject matter; (3) the issues are the same and relate to the subject matter; and (4) the capacities of the persons are identical in reference to both the subject matter and the issues between them." *Markstein v. Countryside I, L.L.C.*, 77 P.3d 389, 394 (Wyo. 2003).

agreed and dismissed Dee's complaint with prejudice on June 25, 2007.

Dee appealed the district court's dismissal of the "Second Complaint," from Civil Docket No. 169-897. However, in his arguments to the Wyoming Supreme Court, Dee merely reasserted his substantive claims based on the alleged unconstitutionality of the Wyoming statutes at issue. Dee made no mention of any procedural issues stemming from the district court's determination that he was barred from re-litigating this issue based on the doctrine of *res judicata*. The Wyoming Supreme Court correctly determined that Dee's failure to address the *res judicata* issue was "fatal" to his appeal. Furthermore, the Wyoming Supreme Court determined that Dee's 1982 conviction was "res judicata as well," as the record reflected that Dee had never directly appealed that conviction and presented no legal argument as to why it should be overturned at such a late date.

REASON FOR DENYING THE WRIT

Petitioner raises three claims, which are wholly unsupported by and contradictory to the actual record in this case. Because Petitioner did not properly raise a substantial federal question before the Wyoming Supreme Court and because the Wyoming Supreme Court based its decision on independent and adequate state legal grounds, the claim is not within the jurisdiction of this Honorable Court. Therefore, the

State of Wyoming respectfully submits that certiorari should be denied due to want of jurisdiction.

ARGUMENT

THE PETITIONER FAILED TO PROPERLY RAISE A SUBSTANTIAL FEDERAL QUESTION, AND THE WYOMING SUPREME COURT BASED ITS DECISION ON INDEPENDENT AND ADEQUATE STATE GROUNDS, THEREBY DENYING THIS COURT JURISDICTION TO CONSIDER PETITIONER'S CLAIMS.

Petitioner asserts that the Wyoming Supreme Court has "decided an important question of federal law that has not been, but should be, settled by this Court." (Pet. for Writ of Cert. at 6). Particularly, he asserts that the Wyoming Supreme Court has "interpreted Petitioner's declaratory judgment action to mean only one thing. Petitioner is 'alleging' marijuana is a constitutional right on the same level as the Fourth and Fifth Amendments of the Constitution of the United States." (Pet. for Writ of Cert. at 5). However, a straightforward reading of the Wyoming Supreme Court's opinion in this case clearly shows that it never ruled on Petitioner's constitutional arguments because those issues were not properly raised before that court; the only issue considered by that court was whether, under Wyoming law, the district court properly dismissed Petitioner's second

suit on *res judicata* grounds. *Dee v. State*, 177 P.3d 218 (Wyo. 2008). Therefore, Respondent respectfully submits that this Court is without jurisdiction to hear this issue. *See Crowell v. Randell*, 35 U.S. (10 Pet.) 368, 398-99 (1836).

It is a long standing rule of this Court that, "when, as here, the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Street v. New York*, 394 U.S. 576, 582, 89 S.Ct. 1354, 1360 (1969) (citations omitted). In this case, the Wyoming Supreme Court stated that Petitioner did not present "any legal argument directly challenging the district court's determination [on *res judicata* grounds]. That failure is fatal to [his] appeal." *Dee v. Wyoming*, 177 P.3d 218, 219 (Wyo. 2008). Nowhere in the opinion did the Wyoming Supreme Court discuss the merits or rationale of Petitioner's alleged constitutional claims. Therefore, Petitioner's assertion that the Wyoming Supreme Court has ruled, in any way, on the constitutional merits of his case, is misplaced and without any basis in the record.

"This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds." *Herb v. Pitcairn*, 324 U.S. 117, 125, 65 S.Ct. 459, 463 (1945) (citations omitted). Because, as the record adequately reflects, the decision of the Wyoming Supreme Court was

based entirely on an interpretation of Wyoming's *res judicata* principles, this Court should follow its long-standing tradition and decline to rule upon this case.

CONCLUSION

For the above and foregoing reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted this 8th day of July, 2008.

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